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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re SANTOS SOLANO FLORES

on Habeas Corpus.

G044868

(Super. Ct. No. 10CF0334)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to challenge an order of the Superior Court of Orange County, Lance Jensen, Judge. Petition granted.

Neil Auwarter under appointment by the Court of Appeal, for Petitioner.

Kamala D. Harris, Attorney General, and Gary W. Schons, Assistant Attorney General, for Respondent.

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THE COURT:\*

Petitioner, Santos Solano Flores, seeks relief from the failure to file a timely notice of appeal from his criminal conviction. We agree Flores is entitled to relief and therefore the petition is granted.

Following a trial, a jury convicted Flores of two felony offenses and he was sentenced to a total term of 50 years to life. In his declaration, trial counsel states he advised Flores at the sentencing hearing that he would file a notice of appeal on his behalf. According to trial counsel, due to a calendaring error, the notice of appeal was inadvertently filed one day late. (Cal. Rules of Court, rule 8.308(a).)

The Attorney General does not oppose granting the petition without the issuance of an order to show cause. (*People v. Romero* (1994) 8 Cal.4th 728.)

The principle of constructive filing of the notice of appeal is applied in situations where trial counsel advises a criminal defendant that he will file a notice of appeal on his behalf, and then fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) Because trial counsel has a duty to file a proper notice of appeal on his client's behalf, (Pen. Code § 1240.1, subd. (b)) Flores's reasonable reliance on counsel's promise to file a timely notice of appeal entitles him to the relief requested.

The petition is granted. The stay previously issued in case number G044789 is DISSOLVED. Further proceedings, including the preparation of the record on appeal in case number G044789, are to be conducted according to the applicable rules of court. In the interest of justice, the opinion in this matter is deemed final forthwith.

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\* Before Rylaarsdam, Acting P. J., Bedsworth, J., and Aronson, J.